



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SDMS Document



116222

URGENT LEGAL MATTER

May 21, 2009

Stanley A. Schutzman
Lot Six Realty Corp. and
Hudson Valley Management Associates, Inc.

C/o Stanley A. Schutzman
Hanig, Handel & Schutzman
22 IBM Road, Suite 210
Poughkeepsie, NY 12601

Re: Administrative Order (Index No. CERCLA-02-2009-2019) Directing Compliance with Request for Access to Properties at 60-70 Fairview Avenue, Town and/or City of Poughkeepsie, Dutchess County, NY

Dear Mr. Schutzman:

This letter transmits the enclosed Administrative Order Directing Compliance with Request for Access ("Access Order") which has been issued by the United States Environmental Protection Agency ("EPA") to Lot Six Realty Corp., Hudson Valley Management Associates, Inc. and Stanley A. Schutzman ("Respondents").

The Access Order has been issued pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9604(e), and directs Respondents to provide to EPA and its authorized representatives, entry and access to properties located at 60-70 Fairview Avenue, Poughkeepsie, Dutchess County, New York so that EPA may conduct response activities, including environmental investigation and potential environmental cleanup pursuant to CERCLA.

Please note that Paragraph 32 of the Access Order provides that it shall become effective five business days after receipt unless, within four days of receipt, a conference is requested as provided in Paragraph 31 of the Access Order.

Please also note that Paragraph 35 directs Respondents to notify EPA within three business days after the effective date as to whether they will comply with the Access Order. Notification to EPA as to Respondent's intention concerning compliance with the Access Order should be addressed to the undersigned at the address provided in Paragraph 31 of the Access Order.

Finally, your attention is directed to Paragraph 26 of the Access Order which discusses potential enforcement in the event of failure to comply, and which provides citation to federal law providing for the potential imposition of civil penalties of up to \$37,500 per violation per day for failure to comply with the Order.

Please call the undersigned at (212) 264-3348 if you have any questions or if you wish to request a conference.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael A. Mintzer', with a stylized flourish at the end.

Michael A. Mintzer
Assistant Regional Counsel
Office of Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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IN THE MATTER OF ACCESS TO REAL PROPERTIES AT THE)
SCHATZ PLANT SUPERFUND SITE, TOWN AND) Index No.
CITY OF POUGHKEEPSIE, DUTCHESS COUNTY, NEW) CERCLA-02-2009-2019
YORK,)
)
LOT SIX REALTY CORP.)
HUDSON VALLEY MANAGEMENT ASSOCIATES, INC., AND)
STANLEY A. SCHUTZMAN,)
)
Respondents.)
)
Proceeding under Section 104(e) of the Comprehensive)
Environmental Response, Compensation, and Liability)
Act of 1980, as amended, 42 U.S.C. Section 9604(e).)
)
-----X

ADMINISTRATIVE ORDER DIRECTING COMPLIANCE
WITH REQUEST FOR ACCESS

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I. JURISDICTION

1. This Administrative Order ("Order") is issued to Lot Six Realty Corp., Hudson Valley Management Associates, Inc. and Stanley A. Schutzman (hereinafter, individually referred to as "Respondent" or collectively as "Respondents"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987, by Executive Order No. 12580, redelegated to the Regional Administrators of EPA on May 11, 1994 by EPA Delegation No. 14-6, and, within EPA Region 2, further redelegated to the Director of the Emergency and Remedial Response Division on November 23, 2004.

II. STATEMENT OF PURPOSE

2. This Order requires Respondents to grant EPA and its authorized representatives entry and access to the properties described in Paragraph 3 of this Order ("Properties"), for the purpose of EPA determining the need for response or EPA choosing or taking response actions pursuant to CERCLA, at or in connection with the Properties. This Order further requires Respondents to refrain from interfering with access to such Properties in order that EPA, itself or through its authorized representatives, may conduct response actions pursuant to CERCLA.

III. FINDINGS OF FACT

3. EPA has identified the Properties as part of the Schatz Plant Superfund site ("Site") for a removal site evaluation pursuant to CERCLA and, if determined by EPA to be warranted, for choosing and taking further cleanup or removal response action at the Site pursuant to CERCLA. The Properties are included within the Site and are identified as the three adjacent parcels of real property containing approximately 20 acres of land, with buildings and improvements located thereon, at 60-70 Fairview Avenue, Poughkeepsie, Dutchess County, New York 12601, designated by Dutchess County tax map as follows: 6162-09-189635 (Town of Poughkeepsie, NY); 6162-09-227572 (Town of Poughkeepsie, NY); and 6162-46-207545 (City of Poughkeepsie, NY), and operated as the Fairview Avenue Business Park.
4. By letters dated July 22, 2008 and October 21, 2008, the New York State Department of Environmental Conservation ("NYSDEC") requested EPA to undertake a removal action at the Site pursuant to the provisions of CERCLA.
5. The Site includes a number of buildings, from one-story to three-stories, which were

originally constructed at various times for Schatz Federal Bearings Co., Inc. ("Schatz Federal Bearings"), a manufacturer of ball bearings which operated at the Site beginning in or about 1915 and continuing until its bankruptcy in 1980 and liquidation in 1981. The Site also includes other structures including smoke stacks and hoppers. Scattered throughout the Site are numerous abandoned trailers, bins, drums, containers and debris.

6. Releases of hazardous substances, including polychlorinated biphenyls ("PCBs"), are believed by EPA to have occurred at the Site during the years of operation by Schatz Federal Bearings between 1915 and its liquidation in 1981, and EPA believes that PCBs from that era remain or may remain at the Site posing further threat of release into the environment. EPA has been advised by state or local officials that Schatz Federal Bearings used PCB lubricating oils in heavy machinery and that used lubricating oils were discarded on the Properties. NYSDEC reportedly observed oil-saturated wooden floor boards in one of the manufacturing buildings (designated by NYSDEC as Building #3) at the Site, and NYSDEC reported the presence of PCBs in these floor boards. Throughout the production buildings at the Site, there are a series of sumps and floor drains that appear to contain liquids and sludge. Such drains and sumps may have released contaminants or may present a threat of such release into the environment.
7. Following the Schatz Federal Bearings bankruptcy, the real estate and buildings at the Site were sold. One of the tax lots comprising the Site was acquired in or around 1988 by Respondent Lot Six Realty Corp. and two other tax lots were acquired by Respondent Hudson Valley Management Associates, Inc. The Properties are operated as the Fairmont Avenue Business Park and are rented to tenants for commercial and industrial operations. Many of the buildings at the Site have apparently been vacant, or partially vacant, for a number of years, are no longer being maintained or heated and are in severe disrepair with broken windows, peeling paint and collapsed walls or ceilings.
8. Among the tenants formerly occupying space at the Site was Four Seasons Dyeing & Finishing Inc. ("Four Seasons"), a corporation organized in 1989 which may have conducted textile dyeing and finishing operations at the Site through the 1990s, but which has since abandoned the Site, become inactive and been dissolved by Proclamation of the New York Secretary of State. EPA believes that Four Seasons, upon vacating the premises, may have abandoned hazardous materials at the Site. In a walk-through at the Site in June of 2008, EPA observed drums with labels indicating contents of ammonia, hydrochloric acid, hydrogen peroxide and also observed intermediate bulk containers with labels indicating contents of sodium peroxide in an area that had reportedly been formerly occupied by Four Seasons.
9. EPA has been advised by officials of the Town of Poughkeepsie that the Town had issued cease and desist orders to numerous tenants at the Site whose occupation was in violation of Town Building Code standards, requiring that those tenants cease operations and vacate the Site. EPA believes that some of those tenants, upon vacating the Site, may have abandoned hazardous materials at the Site including acetylene cylinders, small

containers of gasoline, and other chemicals including paint, paint strippers and solvents, some of which may still be present at the Site.

10. On June 2, 2008, EPA, through its on-scene coordinator, inspected portions of the Site and confirmed the presence of abandoned drummed chemicals, equipment and other waste materials. During the June 2, 2008 inspection, EPA observed: numerous 55-gallon drums with labels indicating contents including ammonia, hydrochloric acid and 50% hydrogen peroxide inside a building at the Site; unlabelled drums containing substances that appeared to be dyes, paints and dry chemicals; containers of debris including broken as well as intact fluorescent light bulbs and lighting fixtures which may contain mercury; layers of paint that may contain high levels of lead peeling from staircases and other surfaces in areas near open doors or broken windows; drains and sumps that contained unidentified liquids; and stains on floors with absorbent materials within the stained area indicating past spills of unknown liquids. Ammonia, mercury and lead are listed hazardous substances as defined in CERCLA, and other substances identified in this paragraph or otherwise present at the Site may contain listed hazardous substances or may be hazardous substances based on a characteristic of ignitability, corrosivity, reactivity or toxicity.
11. Respondent Lot Six Realty Corp., a New York corporation organized in 1986 and dissolved by Proclamation of the New York State Secretary of State in 1993, is the record owner of one of the three parcels of real property located within the Site; Respondent Hudson Valley Management Associates, Inc., a New York corporation organized in 1988 and dissolved by Proclamation of the New York State Secretary of State in 1993, is the record owner of two of the three parcels of real property located within the Site; Respondent Stanley A. Schutzman operates and controls the Fairview Business Park.
12. EPA estimates that the duration of the required entry will be approximately two weeks for the removal site evaluation, including for a removal preliminary assessment and a removal site inspection. Thereafter, EPA may choose and take a response action to address, among other things, conditions described in Paragraphs 6, 8, 9 and 10 of this Order. EPA presently estimates that should EPA determine to choose and take a removal action at the Site, such response activities may take one year to complete. However, because EPA currently lacks sufficient data and information to identify the precise scope of and length of time for any such removal action, the scope and the estimate of the required time provided herein is preliminary based on information currently available to EPA. If EPA selects a removal action for the Site, EPA will provide to Respondents a copy of the decision document selecting such response action describing the scope of the action, and EPA will provide to Respondents its estimate of the length of time to perform such response action.
13. Despite requests from representatives of EPA, Respondents have refused to provide access for purposes of performing the response activities described above. On November 4, 2008, EPA Assistant Regional Counsel Michael Mintzer spoke to Respondent Stanley

Schutzman by telephone, confirmed that Mr. Schutzman was the attorney for Respondents Lot Six Realty Corp. and Hudson Valley Management Associates, Inc., and Mr. Mintzer requested that Respondents provide consensual access to the Properties so that EPA could perform CERCLA response activities. Thereafter, by e-mail of November 4, 2008 to Mr. Schutzman, EPA sent a written request for access pursuant to CERCLA in order for EPA to determine the need for response activities at the Site and for choosing and taking such response. The e-mail of November 4, 2008 included, as an attachment in portable document format (PDF), a consent to access form. Following subsequent e-mail and telephone exchanges between Respondent Stanley A. Schutzman and EPA, Mr. Schutzman, on November 25, 2008 initially advised EPA that he would provide Site access and sign the consent to access form documenting such consent. However, Respondents did not ultimately sign the access form and, on December 8, 2008, Mr. Schutzman advised EPA that Respondents declined to provide consensual access to the Site as had been requested by EPA.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

14. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
15. Each of the Respondents is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
16. EPA has a reasonable basis to believe that substances present at the Site, including substances identified or described in Paragraphs 6, 8, 9 and 10, may be "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or may be "pollutants or contaminants" within the meaning of Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).
17. EPA has a reasonable basis to believe that releases of hazardous substances have occurred into the environment at the Site or threaten to be released into the environment at and from the Site within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1), as the terms "environment" and "release" are respectively defined in Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22). Such releases and threats of releases include, but are not limited to, PCBs that were discharged to soils at the Site and into floorboards at decrepit buildings at the Site as described in Paragraph 6 of this Order, and the abandonment of hazardous substances, pollutants or contaminants at the Site as described in Paragraphs 8, 9 and 10 of this Order.
18. The Properties are facilities, establishments, places or properties where hazardous substances, pollutants or contaminants may be or have been generated, stored, treated, disposed of or transported from within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

19. Entry to the Properties by the officers, employees and representatives of EPA is needed for the purposes of determining the need for response or choosing or taking a response action within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).
20. EPA has requested that Respondents grant access to the Properties at the Site for the purposes set forth in Paragraph 19 of this Order but Respondents have not consented to such request within the meaning of Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5).

V. ORDER

21. Based on the Findings of Fact and Conclusions of Law and Determinations set forth above, and on the Administrative Record, Respondents are hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives full and unrestricted access to the Properties for the purpose of conducting activities authorized pursuant to CERCLA, including determining the need for response activities pursuant to the CERCLA, and for choosing and taking such response activities. By way of example, but without limiting the access provided hereby, such activities may include taking of such soil, water, and air samples as may be determined by EPA to be necessary; sampling of any solids or liquids stored or disposed of on the Properties; installing monitoring wells for subsurface investigation; collecting air samples for soil vapor analysis; performing other investigation and sampling activities as EPA may determine to be necessary; staging and disposing of hazardous materials including hazardous substances, pollutants, contaminants, as well as contaminated items, containers and debris; and taking all environmental response activities, including investigative and cleanup activities deemed by EPA or its representatives to be appropriate to address hazardous substances or pollutants or contaminants which may have been released or which may pose a threat of release at or from the Properties.
22. Respondents shall not interfere with EPA's exercise of its access authorities pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Properties pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.
23. Nothing herein limits or otherwise affects any right of entry or access held by the United States pursuant to applicable laws, regulations, or permits.
24. This Order shall apply to and be binding upon each Respondent and its respective heirs, successors and assigns, and upon each agent of each Respondent, and it shall apply and be binding upon all other persons and entities who are under the direct or indirect control of any Respondent, including any and all lessees of each Respondent.
25. In the event of any conveyance by the Respondents, or any of them, or their heirs,

representatives, successors or assigns, of any interest in the Properties, Respondents and their heirs, representatives, successors, or assigns shall not convey the interest in any manner which would have the effect of hindering or otherwise limiting continued access by EPA and its representatives to the Properties for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Properties so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives. Each Respondent, and the heirs, representatives, successors or assigns of each Respondent, shall notify EPA in writing at least thirty (30) calendar days prior to the conveyance of any interest in any of the Properties and shall include in such notice the name and address of the party to whom such interest will be conveyed; and each Respondent shall, at least thirty (30) days prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

26. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose on a Respondent civil penalties of up to \$37,500 per violation per day (or such higher amount as may be established pursuant to the Debt Collection and Improvement Act of 1996 ("DCIA")), as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the DCIA (see Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75,320 (December 11, 2008)), for each day that Respondent unreasonably fails to comply with this Order. Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site, and recovery of the costs thereof.
27. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against any Respondent, or against any entity which is not a party to this Order.
28. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against any Respondent or any other parties under CERCLA which relate to the Site or to any other site.
29. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. ADMINISTRATIVE RECORD

30. EPA has established an Administrative Record which contains the documents that form the basis for the need for access and the issuance of this Order. The Administrative Record is available for review on weekdays between the hours of 9:00 a.m. and 5:00 p.m. at the following address:

United States Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

Any Respondent may contact Michael A. Mintzer, Esq. of EPA's Office of Regional Counsel at (212) 637-3168, if it wishes to schedule an appointment to review the Administrative Record.

VIII. OPPORTUNITY TO CONFER

31. Respondents, or any individual Respondent, may request a conference with EPA if such request is made within four business days after receipt of this Order by Respondent Stanley A. Schutzman, on behalf of all Respondents. If a request for a conference is made, such conference shall be held no later than five business days after the request. The conference shall be held at EPA offices at 290 Broadway, New York, NY, or at the request of any Respondent, it may be held by telephone. The conference may address any matter pertinent to this Order, including its applicability, the factual findings, the determinations or conclusions of law upon which it is based, or any other relevant and material issues or contentions which Respondents may have regarding this Order. Respondents may appear in person or by an attorney or other representative at the conference. Respondents may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two business days before the effective date of this Order if no Respondent requests a conference. EPA will deem Respondents to have waived their rights to the conference or to submit written comments if Respondents fail to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Michael A. Mintzer
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
(212) 637-3168
(212) 637-3115 (fax)
mintzer.michael@epa.gov

IX. EFFECTIVE DATE; COMPUTATION OF TIME

32. This Order shall be effective five business days after its receipt by or on behalf of Respondents unless a conference is timely requested as provided above. If a conference is timely requested, the Order shall become effective as set forth in the notification by EPA if EPA determines that no modification to the Order is necessary. If modification of the

Order is determined by EPA to be necessary, the Order shall become effective as set forth in the notification by EPA of such modification.

33. Any EPA notification to Respondents, or any of them, under this Order shall be directed to Respondent Stanley A. Schutzman and may, at EPA's discretion, be sent by first class, certified or expedited mail or by facsimile, electronic mail, or oral communication provided that if EPA sends such communication or notification by facsimile, electronic mail or oral communication, it will also confirm such communication or notification by first class, certified or expedited mail addressed to Respondent Stanley A. Schutzman.
34. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

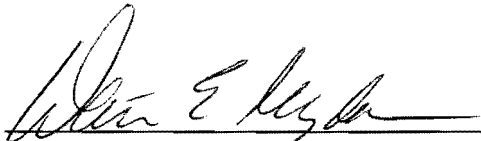
X. NOTICE OF INTENTION TO COMPLY

35. Within three business days after the effective date of this Order, Respondents shall notify EPA in writing whether they will comply with the terms of this Order. Such written notice shall be sent to Michael A. Mintzer at the address set forth in Paragraph 31, above. Respondents' failure to timely notify EPA of its unconditional intent to fully comply with this Order shall be deemed to be 1) a refusal to comply with EPA's order for access, and 2) a violation of this Order.

XI. TERMINATION

36. This Order and all of its terms and provisions shall remain in effect until the Director of the Emergency and Remedial Response Division, EPA Region 2, or his designee, notifies Respondents in writing that access to the Properties is no longer needed for the purposes provided in this Order.

SO ORDERED.



Walter E. Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

May 21, 2009
Date of Issuance